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ALEXANDER L. STEVAS,
CLERK

NO. 80-2146
IN THE

# Supreme Court of the United States

October Term, 1980

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THE STATE OF FLORIDA,

Petitioner,

vs.

MARK ROYER,

Respondent.

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On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Third District

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## JOINT APPENDIX

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Petition filed: June 16, 1981
Petition Granted: November 30, 1981

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NOTE: THE JUDGEMENT OF THE FLORIDA DISTRICT COURT OF APPEAL FOR THE THIRD DISTRICT IS CONTAINED IN THE SUPPLEMENTAL APPENDIX TO THE BRIEF OF PETITIONER ON JURISDICTION at pp.1-79

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

January 25, 1978-Information filed charging Defendant with unlawful possession and possession with intent to sell.

March 8, 1978-Defendant files Motion to Suppress.

May 22, 1978-Trial Court denys Defendant's Motion to Suppress.

May 23, 1979-Defendat files Notice of Appeal.

December 8, 1979-Panel of Florida Third District Court of Appeals affirms denial of Motion to Suppress.

March 5, 1980-Order of Florida Third District Court of Appeal granting rehearing en banc.

April 14, 1980-Oral argument en banc in Florida Third District Court of Appeal.

September 9, 1980-Opinion of Florida Third District Court of Appeal, en banc, reversing trial Court's denial of Motion to Suppress.

March 18, 1981- Opinion of Florida Supreme Court denying Petition for Review.

[R1-R2]
IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR DADE COUNTY

FALL Term, 1977

THE STATE OF FLORIDA INFORMATION FOR

vs

MARK ROYER

I UNLAWFUL POSSESSION OF CANABIS 893.13 (FEL.)

II MANUFACTURE OR POSSESSION WITH INTENT TO SELL, MANUFACTURE OR DELIVER CANNABIS

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA:

JANET RENO, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, information makes that MARK ROYER on the 3rd day of January, 1978, in the

County and State aforesaid, did unlawfully and feloniously have in his actual or constructive possession a controlled substance, to-wit: CANNABIS, meaning all parts of the plant cannabis sativa, including all varieties thereof, whether growing or not; the seeds thereof, the resin estracted from any part of the plant; and every compond, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, in an amount greater than five (5) grams, in violation of 893.13 Florida Statutes, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

JK:erc
1-23-78
Jail NO. 78-389 Bkd. 1-3-78 Jkt.NO.222752
78-200 DIRECT FILE
J/Morphonios

And JANET RENO, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, further information makes that, MARK ROYER, on the 3rd day of January, 1978, in the County and State aforesaid, did unlawfully and feloniously manufacture, or possess with the intent to sell, manufacture, or deliver, a controlled substance, to-wit: CANNABIS, meaning all parts of the plant cannabis sativa, including all varieties thereof, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt derivative, mixture or preparation of the plant, its seeds or resin, in violation of 893.13 (1)(a) Florida Statutes,

[R3-R4]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. 78-200

THE STATE OF FLORIDA,
Plaintiff
vs.
MARK ROYER,
Defendant

MOTION TO SUPPRESS

Defendant, MARK ROYER, by and through his undersigned counsel, hereby files this his Motion to Suppress all physical evidence in this case, including one white suitcase, one grey suitcase, the contents of both suitcases, including a substance alleged to be marijuana and currency of the United States on the following grounds:

1. The property was illegally seized without a warrant.

2. The facts on which the motion is based are as follows:

a. The Defendant was observed in an airport ticket line by two police officers.

b. The officers were narcotics officers patroling the airport looking for people they thought might be carrying narcotics.

c. The Defendant, by reason of the fact that he placed his suitcases near the front of the ticket line, that he appeared somewhat nervous and that he paid cash for his ticket, made the officers suspicious that he might be a person involved in narcotics.

d. That Defendant purchased his ticket and began to move towards the

concourse to board his flight.

e. The Defendant, while engaged in lawful conduct, was stopped by the two officers who identified themselves as police officers and asked the Defendant to accompany them to a lounge area away from the main stream of airport traffic for questioning.

f. The Defendant was further detained and questioned which concluded in the officers searching the Defendant's suitcases.

g. The officers claim that they asked for and received consent to search Defendant's suitcases.

h. The alleged consent was obtained after the officers informed the Defendant that they suspected he was transporting narcotics and after he had been detained for a considerable period of time.

i. One of the officers admitted on deposition that he did not have probable cause to believe the Defendant was transporting narcotics.

j. The Defendant was not advised that he did not have to answer the questions, that the officers had no right to detain him and he was not informed that he could refuse to give his consent to the search.

3. The search of the Defendant's suitcases was conducted in violation of the Fourth Amendment to the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States and Article I, Section 12 of the Florida Constitution. The search was conducted without a warrant. The exception to the warrant requirement relied on by the State in the instant case is consent. It is clear, however, that the

Defendant did not voluntarily consent to the search and that his purported consent was a mere acquiescence to the authority of the officers caused by the illegal detention of the Defendant.

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[T1-T79]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

STATE OF FLORIDA, )
Plaintiff,)

-vs- ) CASENO.78-200

MARK ROYER, )
Defendant.)
)

The above-entitled case came on for trial before The Honorable ELLEN J. MORPHONIOS, Judge of the above-styled Court, at the Metropolitan Justice Building, 1351 Northwest 12th Street, Miami, Florida, on Monday, May 22nd, 1978, commencing at 9:30 o'clock A.M., pursuant to notice.

APPEARANCES:

JAMES McMASTER and
STUART ADELSTEIN,
Assistant State Attorneys,
on behalf of the State of Florida.

FINE, JACOBSON, BLOCK,
GOLDBERG & SEMET, P.A.,
on behalf of the Defendant.
By: IRWIN J. BLOCK, Esquire.

* * *

I N D E X


| STATE WITNESS | DIRECT | CROSS | REDIRECT |
|---|---|---|---|
| William Johnson | 5 | 36 | 48 |
| DEFENSE WITNESS | | | |
| Mark Royer | 51 | 59 | - |


[Thereupon, the following proceedings were had:]

THE COURT: Mark Royer.

Yours, Jim?

MR. McMASTER: I will be handling the motion.

MR. BLOCK: This case, by agreement of counsel, will be disposed of on the motion so it will not be a trial.

THE COURT: What kind of a motion?

MR. BLOCK: Motion to suppress. It will not be a trial so that your calendar can be arranged accordingly.

MR. McMASTER: I have called. The officers are on the way. They will be here in about five minutes.

THE COURT: We can do it this morning?

MR. BLOCK: Yes, ma'am.

THE COURT: Just have a seat and we will come right back to it.

[Thereupon, a short recess was taken, during which time other Court proceedings were had, following which this hearing resumed.]

THE COURT: What about Mark Royer?

Jim, where are you? Is that ready to go?

MR. McMASTER: Yes. If you want to pass it until the end, Mr. Block is outside.

THE COURT: All right. We will do that, then.

[Thereupon, a short recess was taken, during which time other Court proceedings were had, following which this hearing resumed.]

THE COURT: Mark Royer. Are we ready to go on that now, Jim?

MR. McMASTER: Yes, Your Honor.

THE COURT: Okay, Irwin?

MR. BLOCK: Yes.

THE COURT: Okay.

Any and all persons who are interested in the motion to suppress, please come forward to be sworn.

THE CLERK: All who are about to testify, raise your right hand.

THE COURT: You mean we waited all morning and it's only one witness?

MR. McMASTER: Yes, Your Honor. It's going to take some time.

[Thereupon, the witnesses were sworn.]

THE COURT: All right.

MR. McMASTER: Your Honor, for the purpose of the motion, State will stipulate that there was no search warrant and there was no arrest warrant. We are prepared to proceed on that basis at this point.

THE COURT: All right, Irwin. Your motion.

MR. BLOCK: State's going to put the officer on.

THE COURT: Okay, Jim.

MR. McMASTER: You want to have a seat?

THE COURT: No.

MR. McMASTER: Very well, Judge.

THE COURT: Go on.

Thereupon--

WILLIAM JOHNSON

was called as a witness on behalf of the State of Florida and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McMASTER:

Q Officer, would you please state your name and occupation?

A. William Johnson, police officer, Dade County Public Safety Department.

Q How long have you been employed as a police officer for the Dade County Public Safet De partment?

A Approximately three years.

Q Where are you currently assigned?

A Assigned to the Organized Crime Bureau, Narcotics Investigation Section, working the Airport Smuggling Detail.

Q Where in Dade County were you specifically assigned at the time?

A Miami International Airport.

Q How long have you been assigned at the Airport?

A Since November of 1977.

Q Is there a particular unit there?

A Yes, it's the Airport Detail.

Q How many members of the unit are there?

A Currently there is eight investigators and a Sergeant.

Q Do you work alone or with someone else?

A With a partner.

Q And on the date of the arrest, January 3rd of 1978, were you working alone or with someone?

A I was working with Detective Magdalena who is my partner.

Q With regards to your duties at the Airport, do you work any other location other than the Airport?

A Primarily it's the Airport.

Q What are your duties at the Airport?

A We are assigned to identify and apprehend persons involved in interstate smuggling of narcotics who are using the commercial airlines.

Q And what are your duty hours there?

A Basically, we work during the week Monday through Friday. We have three shifts: one that begins at 8:00 o'clock and the last shift stops at 10:00 o'clock P.M.

Q And what do you do during your duty shift?

A We observe persons at the Airport who are purchasing airline tickets. And we meet incoming flights from target cities in reference to drug smuggling.

Q What do you mean by "target cites" ?

MR. BLOCK: Objection. It's immaterial and irrelevant.

THE COURT: Overruled on the motion to suppress.

A [Continuing] Miami, for instance, is a high source city for cocaine and marijuana. And it has been shown that Los Angeles---

MR. BLOCK: Objection to what has been shown.

THE COURT: Sustained, I think.

Q [By Mr. McMaster] Officer, have you received training and instruction with regards to various patterns of narcotic activities been related to

certain cities throughout the United States?

A Yes, sir.

Q Would it be fair to say you concentrate your efforts at the terminal with regard to flights to and from those cities?

A Yes.

Q How many days at a time do you work at it?

A Five.

Q How many hours?

A Eight.

Q How many hours of those days would you be located on the terminals themselves observing passengers?

A Most of those eight hours, as much as we can. That's our primary responsibility.

Q And during your tour of duty are you in uniform or civilian type clothing?

Q Do you ever wear a uniform?

A No, sir.

Q Are you armed while you are there?

A Yes, sir.

Q Carry handcuffs?

A Yes, sir.

Q Police radios?

A No, sir.

Q Have you received training and instruction with regard not only to narcotics cities, identifying cities, but also what has become known as a drug courier profile?

A Yes, sir. When our unit was established it was established in corroboration with the Los Angeles Police Department Administrative Narcotics Section, and very closely with Agent Paul Marconey [phonetic], who at one time was assigned to Detroit, D.E.A. and developed what is known as the drug

courier profile.

Q You have worked directly with person who originated the drug courier profile?

A Yes, sir. I know him personally and we have had meetings with him.

Q Are you also in constant or--strike that.

Are you also in contact with other agencies regarding your particular type od investigations at the Airport?

A Yes, sir. The nature of our investigation requires that we call them directly in reference to suspect persons leaving our city en route to theirs. and they, likewise, call us when they have suspicious persons coming in to Miami.

Q Approximately how many other agencies are you in frequent contact with regarding these types of cases?

A Los Angeles Police Department almost daily. San Francisco, D.E.A. almost as regularly. Seattle, Washington, on a weekly basis. And during the week we receive calls from cities all over the Country.

Q Have you made arrests and given testimony in Court regarding cases such as this?

A Yes, sir.

Q Have you, in fact, traveled to other cities in the United States, throughout the United States and testified in other Courts regarding cases such as this?

A Yes, sir.

Q Specifically with regards to the date of January 3rd, 1978, were you employed in the Airport at that particular time?

A Yes, sir.

Q And that was the date you were working with Officer Magdalena?

A That's correct.

THE COURT: One second.

MR. McMASTER: Certainly.

THE COURT: Go ahead.

Q [By Mr. McMaster] Specifically with regards to the profile that you talked about, you have received training and instruction regarding the profile?

A Yes, sir.

Q And you are aware of how a profile came into being?

A Yes, sir.

Q On January 3rd of 1978, do you recall what your duty hours were on that date?

A I believe it was 9:00 to 5:00.

Q Your are talking about 9:00 A.M. to 5:00 P.M.?

A Yes.

Q And did there come a time when you were located at the Miami International Terminal?

A Yes, sir.

Q And specifically approximately noon to 12:30, did there come a time when you came in contact with a person---

MR. BLOCK: Your Honor, I submit at this time I have to object to leading.

THE COURT: Don't lead.

MR. McMASTER: Very well.

Q [By Mr. McMaster] Did there come a time on January 3rd, 1978, that you came into contact with a person who later became known to you as Mark Royer?

A Yes, sir.

Q Do you see that gentleman in the Courtroom today?

A Yes, I do.

MR. BLOCK: We concede identity.

Q [By Mr. McMaster] Where were you located at that time?

A I was at the National Airlines ticket counter observing persons who were

approaching that counter for the purpose of purchasing tickets.

Q How many persons were in the area at that time?

A I would estimate somewhere in the neighborhood of twenty. It was a fairly busy time of the day prior to their 2;00 o'clock departure flights.

Q The persons that you testified about were waiting to get tickets at that particular counter?

A That's correct. I would estimate that would be the number.

Q Were there other persons in the terminal area also?

A Yes. It was a normal business day at a normally fairly busy time of day.

Q Do you recall exactly or approximately what time it was you first observed Mr. Royer?

A At 12:30 P.M.

Q Where was it that you first observed Mr. Royer?

A I observed him carrying two American Tourister suitcases to the ticket line at National Airlines.

Q Had you received any prior information regarding Mr. Royer at that time?

A No, sir.

Q And what, if anything, drew your attention to him?

A The two suitcases, one was white in color and appeared used, and the other was a silver gray suitcase which appeared to be brand new. The subject appeared pale and he was looking for anyone that might be paying particular attention to him.

His age and his nervosness and his luggage were all significant factors that were consistent with the characteristics of the profile.

Q As to---

THE COURT: Why?

THE WITNESS: The profile was put together by Detroit D.E.A. based on approximately a hundred drug arrests that they had made at their airport, at the airport. And they looked back over all the arrests they made from January of '74, to February of '75, and they found that the persons who had been arrested shared numerous common characteristics, one being they were twenty-five to thirty-five years of age; that their dress was similar in that they were casually dressed. They bought one way cash tickets, primarily from Los Angeles to Detroit, and were primarily at that time involved in heroin trafficking. But they also had other kinds of narcotic cases.

Based on that age, some other characteristics that Detroit found, we institued our program. We found that one of the

characteristics that was common here when we looked back at our arrests, American Tourister suitcases seemed to be standard issue for marijuana smuggling.

This was simply something we observed by looking back at the arrests and looking back at pictures of all the suitcases. And they were a light brown and a light silver color with combination locks on the suitcases, kept reappearing over and over again. And one subject told us that he had purchased---

MR.BLOCK: Objection.

THE COURT: All right, sustained.

A. [Continuing] For that reason, the fact that the Defendant was nervous in appearance, looking around at other persons as though he might be looking for possibly police officers, knowing that he was carrying two suitcases full of marijuana and the types of suitcases and his age and general

dress appearance were all consistent with our experience here in Miami and the drug courier profile that we had started working from. So that attracted my attention immediately.

Q [By Mr.McMaster] Officer, you stated, "I work at the terminal eight hours a day, five days a week." You watch person, is that correct?

A As much as possible when I am not in Court, yes, sir.

Q Approximately how many persons have you observed?

A There would literally be thousands in the last six months.

Q Would it be unusual in your opinion to see someone nervous at the Airport?

A Well, people at the Airport, some of them are in a hurry, and some of them don't really care about flying. That

might be your typical white knuckle type flyer,or they might be meeting somebody. So people are acting in different ways.

What has been my experience, though, is that persons who are looking for somebody will look around, looking for that one person.

Persons who don't like to fly are generally fidgeting and talking to one another or maybe just exhibiting some characteristics of uneasiness. The people in my experience that have ultimately been arrested in possession of narcotics seem to look around and study anyone that is around them to try--and it appears that they are stydying each person. So, in my experience it has been something that is a perceptibly different type of nervousness to us. That word, that may be the wrong word, but---

Q With regards to the Defendant, Mark Royer, would you say based on your experience and observations made at the Miami International Airport that his type of nervousness was different than the white knuckle airline passenger nervousness that you testified about?

MR.BLOCK: I am going to object. There is no way that this witness is qualified to nor can he speculate on different kinds of nervousness or what causes it.

THE COURT: I think he's really already answered it to begin with, so objection is sustained.

Q [By Mr. McMaster] Why were you watching that particular flight, Officer?

A It was a flight to the west coast which is one that is common. It was flight number 136-- or correction, it was flight 136 to New York which departs just prior to the time of the flights

leaving for Los Angeles which is the one we watch closely.

Q You were there for the purpose of watching the flight going to Los Angeles; is that correct?

A That's correct.

Q Now, how long a period of time did you observe him right there at the ticket line?

A Probably fifteen minutes to twenty minutes.

Q And during that period of time what was the Defendant doing?

A Well, the National Airlines ticket counter has a roped off area that requires the people to stand in a line parallel to that counter, and then double back again to get to the ticket selling positions.

The Defendant was observed to carry the bags which appeared by his effort to be very heavy to begin with, and he sat the

two bags off underneath the rope. He would have to walk up there, weigh and then come back again, set the bags underneath the rope right next to each other in front of the ticket counter, and then constantly watch the bags as he walked through the ticket counter, never losing eyesight of the bags and paying very close attention to those bags.

Q What particular significance did your attach to the fact that he sat the bags down inside the ropes?

A Well, the fact that they were very heavy and cumbersome and hard to carry. that was why I figured he sat them down in there.

Q Is it a common observation of yours that persons who set their heavy bags there by the airline counter---

A Most people keep their bags with them. That would be what most people do.

Q What, if anything, did you do at this particular time?

A What happened next?

A We watched him and he was watching the bags and looking around and appearing, as I stated before, extremely nervous while he was standing in the line.

We observed him pull a large roll of bills from his left front pants pocket to pay for the ticket.

Q All right.

Detective, how far away from the Defendant were you at this point?

A Approximately twenty feet.

Q And were you able to see the Defendant clearly or was your view obstructed by anything?

A We could see him clearly. There were a number of people standing around, but we kept a constant surveillance on him.

Q At the time that he drew this large roll of bills that you testified about out,

were you able to see the denominations on the bills?

A No, sir. I couldn't see the denominations. I just observed that it appeared to be an extremely large number of bills.

Q What particular significance, if any, did you attach to the large number of bills?

A Well, the common characteristic from the D.E.A. profile was that the people paid cash for their tickets, which would allow them to use any name that they wanted to without having to provide any kind of proof of identification as would be the case if they were to use a credit card or check. And small demonination bills were also prevalent in the D.E.A. profile. A large number of bills was significant in that regard.

Q What, if anything, did you do at this time?

A Well, we continued to watch his activities as he purchased his ticket.

Q What happened next?

A He was then given two stick-on adhesive labels which are required by the airlines to be attached to any bag that is going to be checked in. And we watched him fill out the labels and attach them to the two bags.

Q Detective, you testified you are about twenty feet away from him at this point?

A Yes.

Q Were you able to see what he filled out on the labels?

A Well, as soon as he filled out the labels and the ticket agent put them on the conveyor belt, I went to the end of the line where the conveyor goes. And the two bags said, "holt,"H-o-l-t. And the word "La Guardia," was written underneath them.

Q What, if anything, did you take those two words to mean?

A Holt, I assumed to be the person's last name. And La Guardia, the airport he was flying to.

Q Are you familiar with the airlines regulations regarding baggage identification?

A Yes, sir. They require name, address and phone number.

Q In your opinion, did the tags filled out by the Defendant comply with those particular regulations?

A They didn't comply with the regulations that I am familiar with. And they were also consistent with other investigations and arrests that I have performed in that only the last name, sometimes not even a city will be attached whereas a person who is truly concerned about the identification uses---

MR. BLOCK: Objection.

THE COURT: Sustained.

A [Continuing] Whereas other people-

MR. BLOCK: Just a minute.

THE COURT: Sustained.

Q [By Mr. McMaster] Were the two bags that you observed with those labels "Holt, La Guardia," on them the same two bags you had observed the Defendant carrying to the counter?

A Yes, sir.

Q What, if anything, did you do at this time?

A The subject left the ticket counter and proceeded toward Concourse F, which is the concourse that leads to the gates that are assigned to National Airlines. And my partner and I approached and identified ourselves as police officers to the Defendant.

Q How did you identify yourself as a police officer?

A We showed him our badges and identification cards and stated we were police officers with the Sheriff's Office.

Q What area of the Airport was he in when you first approached the Defendant?

A It was at the juncture of the main walk-way of the Airport where all the ticket counters are, where Concourse F meets.

Q This is an area open to the public?

A Yes, sir.

Q Is it roped off in any manner whatsoever from access to and from the public?

A No, sir.

Q Do you recall what, if anything, you said at that time to the Defendant?

A We asked him if we could look---

MR. BLOCK: Objection. The question was what he said, not what "We" said.

THE COURT: All right, sustained.

A. [Continuing] I asked the subject if he had a moment to talk. And after we identified ourselves, he said "Yes."

I asked him to show me his airline ticket, which he did, and I observed that it was a one-way ticket to New York in the name of "Holt," Mr. Holt.

We then asked him--I then asked him for identification. And he produced a New Jersey Driver's License in the name of Mark Royer.

Q During these particular questions and answers, how long a period are we talking about?

A Just slightly longer than it took me to relate it to you.

Q And do you recall the exact wording you used?

A I routinely ask people if they---

MR. BLOCK: Objection to "routinely."

THE COURT: Sustained.

Q [By Mr. McMaster] Do you recall what you used in this, the terminology that you used in this particular case?

A. Yes. I asked him if he had a moment to talk. He said he did. I then asked him for him to show me his airline ticket, which he produced. And subsequently his driver's license or some identification. He produced the driver's license.

Q With regard to the driver's license, what observations did you make regarding that?

A That it was in the name of Mark Royer. And that that was not the name that we had observed him write on the identification tags which he affixed to his baggage.

Q What happened next?

A We brought the obvious inconsistencies to his attention and asked

him if he could explain it. He said, "Yes," that a friend had made the reservations for him in the name of Holt.

Q How would you term the Defendant's attitude at this particular time?

A Extremely nervous. He was sweating from the forehead; his face was white and his hands were shaking.

Q At this particular time had you drawn your weapons?

A No, sir.

Q Had you grabbed hold of him in any manner?

A No, sir. We had asked him to talk to us.

MR. BLOCK: Objection.

A [Continuing] I had asked him to talk to us.

THE COURT: Hold it.

oh, yes. Don't use any "We's".

THE WITNESS: Yes, ma'am.

MR. BLOCK: Not only that, but he asked the question and he was not responding. Did you draw any weapons?

THE COURT: Did you draw any weapons?

THE WITNESS: No, ma'am.

MR. BLOCK: That's it.

Q [By Mr. McMaster] Did you grab hold of him, the Defendant, in any manner?

A No, sir.

Q Did you tell him he was not free to leave?

A No, sir.

Q All right.

What happened next?

A We told Mr. Royer that we were narcotics investigators, and that we had reason to suspect that he was transporting narcotics. And we asked him to accompany us to a room that was adjacent to Concourse F to get out of the general population of the Airport.

Q With regard to the room that you are talking about, how far away from the location you were at at this time was that room?

A No more than forty feet.

Q And would you describe the room for the Judge, please?

A When you walk through the door you are in the Stewardess Lounge of Air Florida. And on the left hand wall of that lounge is what used to be a large storage closet.

We use that---we were at the time using that as our room that we would use for interviewing subjects or for processing people that we--well, actually for anything that we needed to use it for.

Q Is that an official police room?

A No, it's a closet that had shelves on one end of it and we fitted a small desk and two chairs in the closet.

Q Did you have any police paraphernalia whatsoever in that room?

A No, because it wasn't an area that we could really secure that well.

Q At the time that you asked him to accompany you to that room, did you display your firearm in any manner?

A No, sir.

Q Take your handcuffs out?

A No, sir.

Q Did you have to grab hold of him physically and lead him to the room?

A No, sir.

Q What happened when you arrived at the room?

A We asked Mr. Royer if he would give us consent to search both of the suitcases.

Q All right.

Who asked?

A I asked Mr. Royer, I am sorry.

Q Do you recall what it was that you asked him?

A To the best of my recollection, it was something to the effect that we suspected that he was carrying narcotics, and that we would like him to open the suitcases to allow us to see what was in them to dispel that suspicion or to confirm that suspicion.

Q What, if anything, did the Defendant say at that time?

A He was extremely nervous about it and he didn't say anything specifically that I can recall. He produced a key out of his pants pocket and opened the white suitcase. And he stated to us that he didn't know the combination for the gray one which appeared to be brand new.

I asked him if we could open it, the gray one; did he have any objection, and he said, "No, go ahead." I explained to

him I might have to break it and he had no objection to that.

Q With regard to the white one, did he say anything prior to opening the suitcase?

A No.

Q Did he open it or did you?

A He unlocked it and I opened it.

Q What, if anything--what observations did you make regarding the contents of the suitcase?

A The white suitcase--

MR. BLOCK: Objection. The contents of the suitcase is not in issue here.

THE COURT: Sustained.

MR. McMASTER: Well, Judge, it's only an issue of fact that he found the controlled substance which is the basis---

THE COURT: I would assume he found that or we wouldn't be here with the

motion to suppress and a case filed. If it was Pampers, I wouldn't think we'd be here.

MR. McMASTER: I understand that, Judge. I just want the record to be clear that he did find the substance inside the first suitcase. All right.

Q [By Mr. McMaster] And did there come a time when you opened up the second suitcase?

A Yes. I obtained a screwdriver and opened the second suitcase.

Q Throughout this period of time from when you first approached the Defendant until he opened or unlocked the suitcase and you looked inside, how long a period of time had elapsed?

A We had observed him for fifteen or twenty minutes while he was standing in line. Our initial confrontation and conversation in the concourse lasted a very

few minutes in that my partner and I were--well, I was very suspicious that he was, in fact, carrying narcotics, and I wanted him to come into the small---

MR. BLOCK: Just a minute.

THE COURT: The question was: How long a period of time?

Q [By Mr. McMaster] How long a period of time?

A. Approximately from the time we first started the conversation in the hallway, I would say---until we found the controlled substance, that period of time?

Q Yes.

A No more than ten to fifteen minutes.

Q During this period of time was the Defendant ever handcuffed?

A No, sir.

Q Was he ever told that he was under arrest?

A No, sir

Q Had you, in fact, placed him under arrest?

A No.

Q Had you ever exposed your fire-arms?

A I don't believe so.

Q All right.

We will go back to your dress on the day in question, January 3rd. Were you wearing a coat?

A Yes, sir.

Q Did you always wear a coat in the terminal?

A Yes, sir.

Q What was the purpose of moving the Defendant to the office?

A For the protection---

MR. BLOCK: Objection.

THE COURT: Overruled.

A [Continuing] For the protection of the general public and also for the fact that we didn't want to embrrass the

person that we were talking to. In our investigations, some people seem to be a little nervous about having, opening their suitcase, and we don't want to embrrass them. And we have had a few persons who have physically resisted.

Q Throughout this period of time during your association with the Defendant, did the Defendant appear to have any difficulty in understanding what you were saying?

A No, sir. It seemed to be very casual. He appeared to be extremely nervous, but it was a very casual conversation.

Q At any time from the time you approached him until the time that you found the substance, did you ever attempt to hide the fact that you were police officers?

A No, sir. That was the first thing we told him.

Q What tone of voice was used during the entire encounter?

A Very similar to the way we are talking now.

Q What did you do after looking in the suitcase?

A We placed the Defendant under arrest for possession of marijuana and read him his Rights per Miranda.

Q Who read him his Rights?

A I did.

MR. BLOCK: That's immaterial for this motion.

MR. McMASTER: Judge, if I might make a proffer, the State is bound to prove certain elements in this particular motion and one of the element to be considered in the motion is the attitude and spirit of cooperativeness between the Defendant and the police officers.

MR. BLOCK: Objection to his

arguing what I was getting ready to rule. In other words, you are wishing to proceed with the advice of Rights to show the attitude?

MR. McMASTER: That's correct, Judge.

THE COURT: All right, go ahead.

MR. McMASTER: Thank you.

Q [By Mr. McMaster] And did he indicate that he understood his Rights per Miranda?

A Yes, he did. I stopped after each sentence and asked him. And he replied that he understood each.

Q Did he further indicate that he was will to speak to you without an attorney and fully understanding his Rights?

A Yes, he did.

Q And did you have a conversation with the Defendant regarding this particular incident?

A Yes, I did.

Q Regarding the details of the incident?

A Yes, sir.

Q At any time during this contact with the Defendant did you ever physically punish or abuse or threaten the Defendant?

A No, sir. It never became a situation where there was any physical contact at all.

Were you able to determine the Defendant's age?

A Based on his driver's license, yes, sir.

Q And how old was he?

A Twenty-one years old. Twenty-two years old.

Q And were you able to determine the Defendant's educational level?

A He told us that he was currently enrolled in college.

Q During any of this time did the Defendant ever appear to be evasive in his answers or discussions with you?

MR. BLOCK: Objection. Immaterial and irrelevant.

THE COURT: Overruled.

A [Continuing] No, sir.

Q [By Mr. McMaster] Did you ever inform the Defendant or tell the Defendant you would get a search warrant if he did not consent to the search?

A No, sir. That never became necessary because--

MR. BLOCK: Objection.

THE COURT: Sustained.

Q [By Mr. McMaster] Throughout this particular period, how many officers were involved?

A Two: my partner and myself.

Q At any time were there any more than two officers?

A No, sir.

Q Is everything you have testified to taken place in Dade County, Florida?

A Yes, sir.

MR. McMASTER: No further questions at this time.

MR. BLOCK: Your Honor wish to proceed at this time?

THE COURT: Yes, please.

CROSS-EXAMINATION

By MR. BLOCK:

Q Mr. Johnson, at no time prior to your opening the suitcase did you have any probable cause to place Mark Royer under arrest: did you?

MR. McMASTER: Objection, Your Honor. Calls for a legal conclusion.

THE COURT: Overruled.

A [Continuing] No, sir.

Q [By Mr. Block] All right.

Now, basically, your main duty is

to try to interrupt contraband from going into the airplanes and going into interstate commerce; is that not correct?

A Yes, sir.

Q And in your investigation you're mainly concerned with securing the contraband more than you are concerned with whether or not you have a proper arrest; is that not correct?

MR. McMASTER: Your Honor, I am going to object to that.

THE COURT: Overruled

A [Continuing] Absolutely not.

Q [By Mr. Block] Now, didn't you indicate in this case that you weren't so concerned about the arrest, but what you wre concerned about was securing the contraband to keep it from going into commerce?

A No, sir. A civil lawsuit is not worth my job.

Q Mr. Johnson, how many people have you seen carrying one old suitcase and one new suitcase?

A I really haven't noticed that particular fact. We have had-- I have made arrests in situations where several of the people we have--

Q Can you answer the question? The question was: How many people have you observed where you saw carrying one new suitcase and one old suitcase?

A Well, several.

Q Several.

And have you observed people carrying one new suitcase and one old suitcase who you did not stop and question?

A That's possible, yes, sir.

Q All right.

Now, in this case from your observations you had a suspicion that the young man might be carrying contraband; correct?

A Yes, sir.

Q And what you wanted to do was to confirm or refute your suspicion; correct?

A Yes, sir.

Q And with that in mind you and your partner decided to stop Mr. Royer; didn't you?

A We decided to go up and talk to him.

Q He was on his way to the concourse where the plane was to take off, I believe your testimony was; correct, sir?

A He was walking in that direction, yes, sir.

Q And you and your partner approached him as he was walking in that direction; didn't you?

A Yes, sir.

Q And the two of you stopped in front of him; didn't you?

A We walked up from the rear to the

side of him and I gave him -- showed him my identification.

Q You showed it from the back?

A No, from the side.

Q You came around to the side and you said, "We are police officers. We'd like to talk to you for a minute;" correct, sir?

A I asked him if he had a minute to talk to us, yes, sir.

Q And you showed him your badge?

A That is correct.

Q You showed your badge because you wanted to show your authority for stopping him; didn't you?

MR. McMASTER: Objection, Your Honor.

THE COURT: Sustained.

Q. [By Mr. Block] When you stop people who you just want to ask some questions of, you don't show your badge; do you?

A Yes, sir.

Q Everybody you talk to?

A In the line of duty, yes, sir.

Q Whenever you talk to someone at the Airport, whether you suspect that they are involved in contraband or not, you always show them your badge, is that your testimony?

A In the line of duty when ticket agents--when we are asking for information ---

Q Mr. Johnson, who asked him to produce the ticket, yourself or Magdalena?

A I recall that I did.

Q Did you when you stopped him tell him that he had a right not to talk to you?

A No, sir.

Q Did you when you stopped him and asked for his airline ticket tell him he had a right not to produce it for you?

A No, sir.

Q When you looked at the airline ticket and then asked for the driver's license for identification or asked for identification, did you tell him at that time that he had a right not to produce any driver's license?

A No, sir.

Q Did you while after you had stopped him tell him that he had a right to move on?

A No, Sir.

Q You are now tall, sir?

A Approximately six foot one.

Q And Mark is about five seven?

A About equal to my, partner's height.

Q And you and your partner were on either side of him?

A The three of us were in close proximity.

Q And he obeyed whatever you asked him to do; didn't he?

A Yes, sir.

Q And who held onto the ticket that

you asked him for, you or your partner?

A I recall that I did.

Q And the airline ticket had the stubs on it for the baggage?

A Yes, sir.

Q And then did you go after the baggage?

A Yes, sir.

Q You used the stubs that you had from the ticket he had produced to reclaim the baggage; didn't you?

A Well, it was more on my observations of what the bags looked like because downstairs there is a number of bags. I looked for the one, and then confirmed it by the ticket number. And also by the name on the stick-on label that I observed on the bags.

Q And you didn't take him with you to get the bag; did you?

A Take who?

Q Mr. Royer.

A No, sir.

Q Who took him into the room?

A My partner. And I went in with him and then I went downstairs to get the bags. My partner remained in the room.

Q You took him into a room that you used for interrogation?

A We used it, yes. That's one of the purposes.

Q And notwithstanding the fact whether you call it an official police room or an unofficial police room, it's a police room?

A Not any more. We lost it.

Q I apologize to you. It was at the time?

A Yes, sir. It was something we could use, but--

Q There was no one else in there?

A No, sir.

Q So, one of you watched him while the other one went after the bag?

A That's correct.

Q And up to this time had you told him he could leave the room?

A No.

Q Had he been warned of his Constitutional Rights up to this time?

A No, he hadn't, if you are referring to the Miranda Warning.

Q Yes.

A No, sir.

Q At some stage along here someone asked him to empty his pockets out. Was that you or your partner?

A I don't recall that.

Q Do you recall that he laid everything down and in amongst his belongings was the key to the suitcase?

A No, sir.

Q Would that have been Magdalena

while you were gone?

A I don't recall that anything came out of his pockets other than the key which he took out, which he produced himself.

Q Well, let's get to that for a moment. Did you tell him he had a right to refuse to have his suitcase searched?

A No, sir.

Q You had stopped him with your badge; correct?

A We had shown our badge upon approaching, yes, sir.

Q Had taken him into this interrogation room: correct?

A We asked him to accompany us and he did.

Q And at this point now you have got his airline ticket which he can't get on the plane without it; can he?

A He couldn't get on without it, but

he never asked for it back.

Q You never offered it back to him; did you?

A That's correct, also.

Q And you hadn't placed him under arrest yet?

A That's correct.

Q All you still had was suspicions you were still trying to confirm?

A That's correct.

Q So, while he was being held in this room by Magdalena you went after the suitcases?

A I recall that I asked him.

Q And he didn't even open it; did he?

A He unlocked the white one because he had the key. They gray one he stated he didn't know the combination, so he couldn't open it.

Q Did you tell him he had a right not to unlock the suitcases?

A No, sir.

Q Did you tell him he had a right not to have his personal belongings searched?

A No, sir.

Q And the only persons in the room besides Mark were two police officers?

A That's correct.

Q And you already had told him that you suspected that he was carrying narcotics?

A That's true.

Q So, you told him you suspected that; you took him into a room and you said you asked him under those circumstances if you could search his suitcase?

A Yes, sir.

Q Your whole object was to get a look in the suitcases; wasn't it?

A Yes, sir.

Q Prior to the time the suitcases

were opened, you had not seen him commit any crime; had you?

A No, sir.

Q Who held the airline ticket while you went after the suitcases?

A They were left in the office.

Q Didn't you take them with you for the baggage stubs?

A No, sir.

Q What did you do? You just pulled off the baggage stubs?

A Yes, sir.

Q Your left them with who, Magdalena?

A Yes, sir.

Q The airline ticket was never returned to him until after the suitcases were opened: were they?

A No, sir.

Q He never told you--I am sorry, strike that. At no time after you stopped him was he ever told he could leave; correct?

A No, sir. He never asked.

Q Please answer the question.

Did you ever tell him he could leave once you stopped him?

A No.

MR McMASTER: If I might, I believe the question has been asked about five or six times already.

THE COURT: It has.

Q [By Mr. Block] And you never told him that he did not have to talk to you?

MR. McMASTER: Objection; same basis.

THE COURT: It is repetitious.

Q [By Mr. Block] And you never told him that he did not have to consent to the search; did you?

MR. McMASTER: Objection, Your Honor: same basis.

THE COURT: Same ruling.

Q [By Mr. Block] Basically, he

acquiesced in everything that he was asked to do; did't he?

A Yes, sir. He was very cooperative.

MR. BLOCK: I have nothing further.

REDIRECT EXAMINATION

By MR. McMASTER:

Q Detective, Mr. Block has indicated that you are not concerned with the ultimate outcome or the legality of your arrest. Isn't it a fact in certain situations where the the Defendant refuses consent you let them get on the airplane?

A Yes, sir. I have done that.

MR. BLOCK: I object and move to strike it in this case.

MR. McMASTER: Judge---

THE COURT: Sustained.

MR. McMASTER: Judge, I would argue that the Defendant made the argument that the police officers are not concerned

with the legalities of the arrest. He's indicated that the officers would proceed with illegal searches regardless of the circumstances.

THE COURT: The officer rather adequately stated it when he answered it that, "A civil suit wasn't worth it."

MR. McMASTER: Very well, Judge.

Q [By Mr. McMaster] Detective, did you go down to get the bags before or after the Defendant consented to the seach of these bags?

MR. BLOCK: Objection.

THE COURT: Rephrase it as to before or after his conversation.

Q [By Mr. McMaster] Before or after your conversation with the Defendant, did you go down and get the bags? Before or after the conversation with the Defendant in the room?

A After we talked to hm.

Is it unusual after an arrest to have a Defendant empty his pockets on the table?

MR. BLOCK: I am going to object to what happened after the arrest; we are concerned with what happened prior to the arrest.

MR. McMASTER: Judge, the Defendant has made an argument that the officer required the Defendant to empty his pockets and there was no testimony as to those particular facts. I am merely proffering that it's entirely consistent with the facts and entirely reasonable that the act could have been done subsequent to the Defendant's arrest.

THE COURT: Did you ask him to empty his pockets after the arrest?

THE WITNESS: Yes, ma'am. We routinely inventory persons after they are arrested.

MR. McMASTER: No further questions.

THE COURT: Recross, Irwin?

MR. BLOCK: No, Your Honor.

THE COURT: Who do you want?

MR. McMASTER: That's it.

MR. BLOCK: Your Honor, I can put the Defendant on but I honestly don't consider it necessary under the facts of this case.

THE COURT: Why don't you both stipulate to what his testimony would be unless---

MR. McMASTER: I don't really know what his testimony is going to be.

MR. BLOCK: Well, his testimony would be that---

THE COURT: I think you better make the best record you can, Irwin.

MR. BLOCK: Then, let's put him on the witness stand.

Okay, Mr. Royer.

Swear him, or was he?

THE CLERK: He was sworn, Your Honor.

Thereupon--

MARK ROYER,

the Defendant herein, was called as a witness on his own behalf, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLOCK:

Q State you name.

A Mark Royer.

Q How old are you, Mark?

A Twenty-two.

Q Where do you live?

A New Jersey.

Q On the day in question after you purchased your airline ticket, what next

occurred?

A I turned away from the counter, was walking towards the concourse. The agent had told me where the point was at and I was approached by two officers, or two men.

Q What happened when they approached you?

A They took out their badges; said they were officers of the law and that they wanted to talk to me.

Q And what did you do then?

A I stayed and figured that I was going to have to talk to them.

Q Why?

A Because they were police officers and I felt that that's what I had to do.

Q Did they tell you that you had a right to leave or not to talk to them?

A No, they did not.

Q All right.

What next happened after the officers were talking to You?

A They said they wanted to see my airline ticket which was in my hand.

Q What did you do?

A I let them look at it.

Q Why did you give it to them?

A Because they had asked me to. They were police officers and I thought I had to.

Q Did anyone tell you you did not have to produce the airline ticket?

A No.

Q Did anyone tell you you had a right to leave at that time?

A No, they did not.

Q Did you produce it voluntarily?

A When they asked me I did.

Q Why?

A Because they were police officers and I felt I had to.

Q Did they give you back the airline ticket at any time after that?

A No, they did not.

Q After taking your airline ticket what was next said?

A They said they wanted some I.D.

Q Did they tell you that you had a right not to produce any I.D.?

A No, they did not.

Q Did you produce it?

A Yes, I did.

Q Why?

A Because they were police officers and I thought I had to do what they told me.

Q Did anyone tell you you had a right to leave?

A No.

Q And what happened after that?

A I gave them my wallet. I took out my wallet and produced my license, I believe.

Q After they looked at that, what happened?

A They noticed the discrepancy in the names.

Q And then what, if anything, did they tell you to do?

A Next they asked me why there was a discrepancy, and I told them that I had not made the reservations.

Q All right.

After that, what, if anything, did they tell you to do?

A They said that they wanted to talk to me in private; to come with them into a lounge.

Q Did they tell you that you had a right not to go with them?

A No, they did not.

Q Why did you go with them?

A Because they were police officers and I thought I had to; that they had

to; that they had found a discrepancy in the names that there must be something wrong.

Q Did you think you had the right to leave at that time?

A No, I did not.

Q And that is why you went with them?

A That is correct.

Q Did the officers, one or both of them, or you together with them get the suitcases afterwards?

A I did not get them. When I had gotten the ticket the agent did not put them on the conveyor belt. He put them between the counter and the conveyor belt. Then, one of the officers went to the end of the conveyor belt and signaled for them to be brought down. And they pulled them right out and they never went in the back room.

Q Did you give them permission to take your suitcases?

A No, I did not.

Q At that point did they even ask you for permission?

A No.

Q Okay.

So, where were you and the suit cases taken?

A I was right where they had first stopped me.

Q And where did you end up?

A I guess another two hundred feet down there was a small room that they took me into.

Q Now, after you and the officers got settled in that room, did anyone stay in the room with you besides the officers?

A There was a woman there when we first went in and she left.

Q Why didn't you leave?

A I didn't feel I had the right to. These were two police officers and they

had told me to come with them.

Q Had anyone placed you under arrest yet?

A No.

Q Had anyone advised you of any of your Constitutional Rights?

A No.

Q At that point what conversation, if any, was there with reference to the suitcases?

A Well, on the way to the room one officer said that they had been waiting for me all morning. They expected me earlier and that he wanted to know how much pot was in the bags. And that I must have been crazy to try to do this because there was always guards around.

Q Did you respond in any way tc that?

A I said I did not know what they were talking about.

Q And then what happened after you got into the room?

A I sat in the outer room. There was what the officer described as a closet on the other side, and I guess they did a little--I don't know what they were doing. And then, they brought me in the inside room.

Q And then what happened?

A They asked me to empty my pockets.

Q Did you do it?

A Yes, I did.

Q Had you been placed under arrest yet?

A No, I had not.

Q Did anyone tell you you had a right not to empty your pockets?

A No, they did not.

Q And what ahppened after you emptied your pockets?

A There was a key that was on the

desk top that was a luggage key, and they told me to open up the suitcase.

Q Did you unlock it?

A I unlocked it

Q Well, why did you do it?

A Because they had told me to. I felt I had to.

Q Why didn't you leave?

A I didn't think that was a possibility. I didn't want to get hurt.

Q Why did you unlock the suitcase?

A Because they had told me to.

Q Did anyone tell you you had a right not to submit to a search?

A No.

Q Did anyone even ask for consent to look into the suitcase?

A Not that I recall. They said they wanted to look inside.

Q And they just looked?

A Told me to unlock it and I unlocked it. They opened it.

Q Did they ever give you back your airline ticket before this entire incident was over?

A No.

Q Did they return your identification or did they retain that?

A Well, when I had my--they told me to empty my pockets. It was on the desk, also.

Q Did you consent to being stopped by the police?

MR. McMASTER: Objection, Your Honor: calls for a legal conclusion.

THE COURT: Sustained.

MR. BLOCK : You may inquire.

CROSS-EXAMINATION

BY MR. McMASTER:

Q Mark, you are twenty-two years old?

A That's correct.

Q You have never been convicted of a crime before isn't that correct?

A That's correct.

Q Were you a student at this time?

A No, I just graduated college.

Q You just graduated from college?

A Tha's right.

Q You wre a student on January 3rd, 1978?

A Yes, I was.

Q You were in your senior year of college at that time?

A Yes.

Q And what was your major?

A Communications

Q What is the college?

A Ithaca College.

Q Where is that?

A Ithaca, New York.

Q How long had you been going to college in Ithaca, New York?

A Three and a half years.

Q You have relatives in Miami?

A No, I do not.

Q What was your purpose in being in Miami on January 3rd, 1978?

MR. BLOCK: I am going to object. That's immaterial and irrelevant.

THE COURT: Sustained.

Q [By Mr. McMaster] You were the person in the Airport on January 3rd, 1978; is that correct?

A That is correct.

Q And you were the one that carried the bags in; is that correct?

A That is correct.

Q You had the key to the one suitcase?

A That is correct.

Q At the time that the officers approached you did they grab hold of you or hit you or strike you in any manner whatsoever?

A No.

Q Isn't it a fact that their entire manner was very courteous?

A When they first introduced themselves, yes.

Q Did you buy the ticket there when the officers watched you walk in?

A Yes, I did.

Q And did you pull from your pocket a large number of bills?

A Not many more than it takes to pay for the plane flight?

Q How much did it take to pay for the plane flight?

A I am not quite sure. I believe about a hundred and ten, something like that.

Q Are you employed?

A No, I am not.

Q Full time student?

A Yes, I am.

Q Did you make a reservation for the plane?

A No, I did not.

Q Who did?

MR. BLOCK: Objection, immaterial and irrelevant.

THE COURT: Sustained.

MR. McMASTER: Judge, if I might---

THE COURT: Sustained.

Q [By Mr. McMaster] Were you aware that the reservations for the plane had been made in the name of Holt?

A Yes, I was.

Q Is there a person named Holt that you know of?

MR. BLOCK: Objection.

THE COURT: Sustained. Let's get to the reasonableness or unreasonableness of the search as required under the Constitution.

MR. McMASTER: Very well, Your Honor.

Q [By Mr. McMaster] At the time that

you went into the room with the officers, did they at that time grab hold of you by the arm and escort you to the room?

A No, they were on either side of me.

Q Did they tell you you were not free to go and you had to go with them?

A Say that one more time?

Q Isn't it true that the officers---

MR. BLOCK: I didn't hear that answer.

MR. McMASTER: He asked me to repeat it, I believe.

MR. BLOCK: I am sorry.

MR. McMASTER: I will restate the question.

Q [By Mr. McMaster] Isn't it ture that the officers, when they asked you to goto the room, were still very courteous at that point?

A In a manner of speaking, as I said, the one officer was what I would consider

telling me that I had pot in the bag.

Q Did they ever pull any guns on you?

A No, they didn't pull any guns on me.

Q Did they handcuff you?

A Not out in the terminal, no.

Q Did they threaten you with any physical punishment?

A Not out in the terminal.

Q Inside the room did they pull any guns on you?

A Didn't pull any guns, no.

Q They eventually handcuffed you after you were placed under arrest; correct?

A They handcuffed me.

Q At the time that you were place under arrest, at the time they saw the marijuana; isn't that true?

A I believe so.

Q You stated that prior to your consent to the search, they demanded that you empty your pockets on the table?

MR. BLOCK: I am going to object. He never said he consented to any search.

THE COURT: Rephrase.

Q [By Mr. McMaster] Isn't it true that you testified they required you to place all of your belongings from your pockets on the table?

A That's right.

Q And a key was placed on the table?

A It came out of my pockets

Q It was right on the table where the officer could see it?

A That's right.

Q Didn't you also testify they never asked you for a consent? They just said they wanted to look in your bags?

A That's right.

Q That they told you to unlock the

the bag?

A Doesn't it seem a little unusual to you when they would tell you to pick up and unlock the bag when they can do it themselves if they didn't care that they would ask---

MR. BLOCK: Objection. That's not the---

COURT: Sustained.

Q [By Mr. McMaster] Isn't it true that after you were placed under arrest that the police officers read you your Miranda Rights?

A After I was arrested, yes.

Q And you, in fact, spoke, to them, didn't you?

A Yes.

Q Was that because you thought that they were police officers and they had a right to speak to you after the Rights?

MR. BLOCK: Ojection. That's

immaterial and irrelevant at this point.

THE COURT: Sustained.

MR. McMASTER: No further questions at this time.

MR. BLOCK: No redirect, Your Honor.

THE COURT: Have a seat, please, Mr. Royer.

Argument.

MR. BLOCK: If Your Honor please, we respectfully submit that the search in this case was illegal, unconstitutional, in violation of the Defendan'ts Rights under the Fourth and Fourteenth Amendments to the Constitution of the United States, and the applicable provisions of the Florida Constitution that it is obvious that this young man was in custody; that he was being held by police officers; that he acquiesced and obeyed what they asked him to do.

And that is not consent under the law and that there is absolutely no basis here.

If Your Honor please, the evidence uncontradicted shows they stopped him on suspicion. No warnings. Didn't tell him he had a right to go.

They took his ticket from him. Never gave it back to him. That'san arrest. They took away from him the means by which to leave.

Not only that, they didn't ask him to accompany them into the room. The officer says: "We told him to come into the room with us."

MR. McMASTER: Objection. I don't believe that was the testimony, Judge.

THE COURT: Well, the record will speak for itself on the testimony that has been offered.

MR. BLOCK: Let's accept that they asked him to accompany into the room.

Under those circumstances, when they stopped him, questioned him, took his ticket away and there was nothing else that he could do but follow them, the people who were holding his ticket, he was technically in custody and under arrest, notwithstanding whatever they said or didn't say. Taking him into that room was illegal and unconstitutional. That was an arrest. That was in custody.

Everything that followed thereafter was illegal, if Your Honor please. Your Honor's probably familiar with the case o Blizzard vs. State, 336 So.2d 132.

In this case the officer said that he didn't make any arrest. He asked the young man, the youth to go along with him for questioning. And they said Bailey [phonetic] made no arrest in the technical and restricted sense when he asked Opollen [phonetic] to accompany him to

Headquarters for questioning. But the absence of a formal arrest does not end the requirement of a Fourth Amendment mandatory arrest whether announced or unannounced and it applies a rule of reason to both greater and lesser intrusions to protect privacy. The threshold issue then is whether there was a personal seizure.

That's a threshold issue, was there a seizure of this young man stopped by police officers without cause, without basis. They admit they had no right to make an arrest, but they had suspicion, and they wanted to get into the suitcases. And then they keep his ticket. He can't leave. If that isn't an indication you are under arrest, then there is no indication that you are not under arrest if the officer doesn't tell you you are under arrest.

They took his ticket from him and they kept it. And that's the threshold issue.

And the Court goes on, the Florida Court and quotes from the U.S. Supreme Court and says obviously not all personal intercourse between policemen and citizens involves seizures of persons, only when the officer by means of physical force or show of authority has in some way restrained the liberty of a citizen may we conclude that a seizure occurred.

The officers showed their authority and restrained the liberty of this young man at that point. That was illegal. They took his ticket from him and they said--we will accept what the State says--"Accompany us."

They didn't say he didn't have to go; they said, "Accompany us." And they have got his ticket and there is nothing he can do but accompany them.

If he ran away he'd get shot under those circumstances.

MR. McMASTER: Objection, Judge.

THE COURT: Sustained.

MR. BLOCK: We respectfully submit that not only is that the Florida case law, but that's the general law with reference to the issue of whether or not this was a consent.

Your Honor, I don't really think it's necessary to argue all these cases. I just cannot see how the actions in this case do not constitute a restraint of the young man's liberty when he is stopped by police officers; asked to accompany them. They take his airline ticket. He cannot leave, obviously. Then he is in their custody. They are holding onto the airline ticket. They take him into a police room for questioning.

What would have happened if he had run away at that point?

And he told you, and there's no contradiction, that he went because he thought he had to go. Obeying a policeman is not consent. It is not a voluntary action on the part of an individual, and we respectfully submit that taking everything that the officer said it's interesting, also, Your Honor, that the officer said that he asked Mark to open the suitcase, to unlock it. And then the officer opened the suitcase. He didn't ask Mark to open the suitcase. The officer went that far, but really we have to get back to the threshold issue. They stopped him on suspicion. They had no basis for stopping him, no probable cause to make an arrest.

They took his airline ticket and invited him into a police room for interrogation.

That is an arrest. That is a seizure

of the individual. Everything that follows after that is illegal and unconstitutional.

MR. McMASTER: Most respectfully, Judge, with regards to the issues which Defense Counsel has brought forward, what he terms to be the threshold issue of the illegal arrest, as he terms it, and then everything subsequent to that must be illegal. He is saying that because there is an illegal arrest the consent is invalid.

I would submit that the case law does not say that, per se, Judge. It would say that an illegal arrest is one of circumstances to be considered as to whether there is a valid consent, but the real issue in this case, Judge, is whether there was, in fact, Judge, a free and voluntary consent on behalf of this Defendant, whether the officers' observations and training were the basis for a

legitimate stop and whether, in fact, the circumstances surrounding the free and voluntary consent or whether the circumstances surrounding the consent were, in fact, free and voluntary.

The State's contention, Judge, and of course we are bound to show the Defendant's state of mind at the time of the incident, and we, of course, have no direct line into his brain, so we can only show the circumstances.

The State contends originally the initial approach by the officers first doesn't even fall under the standard unfounded suspicion.

Under Terry, Terry versus Ohio case, the U.S. versus Pope case, and the local case of State versus Wigfall, cited 323 So.2d, 587, indicates that all conversations, or contacts between police officers and individuals is not a seizure

within the meaning of Terry.

State contends under the Wigfall case a situation where a police officer patrolling at 1:00 o'clock in the morning observing a car parked with a passenger in it in the parking lot of a bar, that's the only thing the officer had prior knowledge that the parking lot was a high crime rate area and that the parking lot had been used for dropping off stolen cars in the past. Based on the officer's previos experience and training regarding the area and his observation, there was a car with somebody in it at 1:oo o'clock in the morning, he approached the person seated in the car; asked for identification. The I.D., the driver's license was given to the police, and an arrest ensued based on later circumstances which came later, but the Third District ruled in that case there was not even a stop.

Everything that occured there was purely voluntary between the Defendant and the police officers. We would argue that the initial approach doesn't even fall under Terry. It requires nothing. But, even assumed arguendo that Your Honor assumes and rules that it is a stop, that the police officers have to have something, then the State argues the officers have founded sus' 'cions.

The officers testified as to their observations, their training, their knowledge regarding the type airport, type cases, the fact they had been in contact with all these different circumstances which in his experience and training indicated that he had something to found his suspicions, and that is what is required, a founded suspicion.

Case law, Judge, all indicated that if an officer has a founded suspicion he is entitled to detain to prove and detain a suspect under Terry principle. And detain means he can keep him there until the circumstances surrounding the suspicions in his mind are adequately explained.

The State contends that if you are going to hold that it's estopped that the officer has testified to founded suspicion, that would justify the stop, it's a balancing test. All the Courts indicate it's a balancing test between interest of the State in pursuing the drug laws, enforcement of the drug laws and intrusion upon the Defendant.

Here we have a very minimal type intrusion where the officer is approaching in a public area, merely requesting identification. They don't even demand

it. The officers never pointed guns, never dragged out handcuffs; never take him anyplace personally. It's merely a cooperative type attitude between the Defendant and the police officers.

The police officers asked him to go into a room. He explained what the purpose was, to get him out of the main stream. And also for the privacy of the Defendant to cause him as little embrassment as possible.

The officer testified that there was no expression, there was no indication, "Well, we will get a warrant," or whatever.

And the test here, Judge, is totality of the circumstances as to the consent. You have a twenty-two old, I believe at that time a twenty-one year old, white male who was in his last year of college in New York, who was here, who was

in his last year of college in New York, who was here, who was not handcuffed; who was not beaten; who was not threatened; who was held for approximately ten minutes from the time he was first approached until the time that he gave his consent. A person who was requested for consent, specifically.

The police officers identified themselves. They didn't attempt to use any type of ruse or say that they were Customs employees or airline employees, or anything of that nature.

The State submits that the Defendant was aware of his Rights; the circumstances indicate that he was aware of his Rights; that he waived his Rights. He did give a free and voluntary consent. He was not threatened, forced or coerced in that particular consent.

THE COURT: Irwin?

MR. BLOCK: If Your Honor please, in brief reply, the case law is a search and seizure may be made without a search warrant if the individual freely and intelligently gives unequivocal and specific consent to the search uncontaminated by any duress or coercion actual or applied. That's what we have in this case.

Furthermore the case law is that the waiver must be an intelligent relinquishement of a known right or privilege. They must have told him of is right to object to and not consent to a search before they can say that he gave an intelligent waiver, expecially where the circumstances are such that there is either actual or implied duress or coercion.

Certainly the State cannot deny that under the circumstances of this case there is actual or implied duress or coercion. And the case law further is that coercion is implicit in situations where consent is obtained under color of a badge. And this is a Federal case, and they say that the Government must show that there was no coercion. In fact, the Government's burden is greater where consent is claimed to have been given in this case while the Defendant is under arrest; in our case while he was in custody, and I respectfully submit, under arrest because a detention is an arrest. It is not necessary to tell an individual "You are under arrest." A detention is under arrest.

The threshold issue in this case and everything that followed after it would be contaminated by what occurred when they

took away his airline ticket and asked him to accompany them into a police office. He was detained. He was under arrest as well as if he had been handcuffed. He knew he couldn't leave; he didn't leave.

I respectfully submit that that is violative of his Fourth Amendment Rights.

THE COURT: Anything further?

MR. McMASTER: Yes, Judge.

Just one more thing: Most respectfully, I believe that the law was incorrectly stated to Your Honor. I would like to clear it up.

First of all, the point Mr.Block makes regarding the free and voluntary knowing and intelligent waiver of the Defendant's Right does not apply on consent searches under the Fourth Amendment. The State would cite to Your Honor that the United States Supreme Court case of Schneckloth versus Bustamonte, wherein

that particular issue was brought directly upon the Court in a very long dissertation regarding the weight to be given the Rights under the Fourth Amendment as opposed to the Rights that would guarantee a fair trial at the time of trial, are completely different. They specifically held that the standard for a waiver on consent, Judge, is free and voluntary. It specifically held that it was not a knowing and intelligent waiver because otherwise the Defendant could come into Court and say, "They never advised me of my Rights, therefore it was not intelligent when I gave consent." And it would completely frustrate the purpose of it.

Not only would I cite Schneckloth, I would cite Florida Supreme Court, 1975, Bailey v. State, Third District, MacLemrock [phonetic] v. State, Second and Foruth District cases in addition to

numerous Federal decisions indicating that the State is not required--that he has the right to refuse consent. They are unanimous in their holding about that, Judge.

I state or I submit to the Court that under the circumstances of this case, the Defendant freely and voluntarily waived his Rights and consented to the search.

THE COURT: Anything further?

MR. BLOCK: Just the one sentence conclusion. It cannot be any free and voluntary consent when they take his ticket away from him and take him into a police office for interrogation.

THE COURT: Anything further?

MR. BLOCK: No, Your Honor.

MR. MCMASTER: Nothing, Judge.

THE COURT: Motion to suppress be in the same is hereby denied.

We are dealing with an unusual circumstance. Profile searches, as they have been called, I believe, is something new. But then at the time the Carroll [phonetic] decision, the search of an automobile and the manner in which it took place, was something new. What is reasonable in one circumstance may not be reasonable in another circumstance.

Number one, the Court's ruling, on denying the motion to suppress, is that the Court believes that the consent was freely and voluntarily given. By the same token, I think under circumstances such as this where the police officers are in an airport and are surveilling, as testified to by the officer, with a specific profile that they are following, that the officer doesn't have the time to run out and get a search warrant because the plane is going to take off. If there is

going to be anything occurring, it's going to occur long before they can take any type of action. So it's a denial on dual grounds. Might as well get it tested whether it's reasonable or unreasonable because, I assume you are taking an appeal?

MR. BLOCK: I don't think the young man can afford an appeal.

THE COURT: That can easily be solved.

MR. BLOCK: If Your Honor please, the tate and us have entered into some plea negotiations with reference to this matter, and we would--our negotiations are as follows: The Defendant would enter a plea of nolo. The next part we had not discussed. I would like under the new Rules to research it.

THE COURT: Oh, yes.

MR. BLOCK: To the Defendant's right to question this issue on appeal

[R8]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO.78-200(morphonios)

THE STATE OF FLORIDA, )
Plaintiff)
vs. ) NOTICE OF APPEAL
MARK ROYER, )
Defendant.)
)

NOTICE IS HEREBY GIVEN that the Defendant appeals to the District Court of Appeal, Third District of Florida, the Order of this Court entered the 22 day of May, 1978.

The nature of the Order appealed from is a Final Judgment and Sentence entered after a plea of nolo contendere, specifically reserving all search and seizure

questions would be dispositive of the entire case.

Respectfully submitted,

MARK ROYER

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished, by mail, to the Sate Attorney, 1351 N.W. 12th Street, Miami, Florida and the Attorney General, 8585 Sunset Drive, Miami, Florida this 23 day of MAY, 1978.

MARK ROYER